

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.650 OF 2005
IN
W.P.NO.1659 OF 2005

Young Women's Christian
Association and Ors. ..Petitioners

Vs.

State of Maharashtra & Ors. ..Respondents

...
Mr.I.Chagla Senior Counsel with Mr.R.Chagla
i/b Federal & Rashmikant for Petitioners
Mr.R.M.Sawant Govt.Pleader for Respondent No.1
Mr.Y.J.John counsel for Respondent Nos.3 to 7
...

CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI, JJ.

DATE : JULY 7, 2006

P.C.

1. Heard the learned counsels for the parties.
2. The petitioners herein had filed the petition before this Court against the orders of Charity

Commissioner dated 15.4.2005 and 6.6.2005. From the proceedings before the Charity Commissioner, it is apparent that time was given by the Charity Commissioner to the petitioners to move this Court till 18.6.2005. The petitioners moved this Court and an ad-interim order came to be passed on 16.6.2005. Matter thereafter again came up before this Court on 28.6.2005 and by consent of the parties, the impugned order of the Charity Commissioner was stayed and certain directions were given. The present Motion by the petitioners is moved by way of relief against the very same order of the Charity Commissioner in proceedings in Application No.25 of 2005. That application had been taken out by Respondents Nos. 3 to 7 on the premises that the petitioners herein had violated the order of the Charity Commissioner dated 15.4.2005.

3. On behalf of Respondents Nos. 3 to 7, the learned counsel points out that they had moved the Charity Commissioner on 4.6.2005 for taking action against the petitioners for failing to comply with the order of this Court and as such they should be permitted to pursue that application.

4. The first question that arises is that after having obtained the order by consent on 28.6.2005 whether it was open to the Respondents Nos.3 to 7 to have pursued the application. Once the order was stayed, stay would be effective in respect of all actions including prior and consequential actions flowing from the said order. It was open to the Respondents Nos.3 to 7 to have pointed out to this Court when the matter was heard on 28.6.2005 that application dated 4.6.2005 is pending and they should be permitted to pursue that application. Suppression of a material fact is no answer to contend that it is open to them to proceed with the said application, more so when the order of 15.4.2005 was stayed by consent of the parties before the Court.

5. We are clearly of the view that the entire exercise by the Respondents Nos.3 to 7, after this Court had stayed the order, in pursuing the matter once again before the Charity Commissioner, was clearly contrary to law. We are, therefore, inclined to grant prayer clause (a) considering the order of 28.6.2005.

6. Considering the fact that inspite of Respondents

Nos.3 to 7 knowing and were parties to the consent order, yet they had chosen to proceed before the Charity Commissioner and further wasted a lot of judicial time in defending the action which was clearly indefensible, we are of the opinion that the same amounts to an abuse of process of this Court. Considering that, we direct Respondents Nos.3 to 7 to pay costs of Rs.5,000/- which costs are to be paid in the Maharashtra State Legal Services Authority within fifteen days from today.

7. With the above observation, Motion is disposed of.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI, J.]